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10/623,120	07/18/2003	Luke K. Liang	Vision 105P	4462

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EXAMINER

STRIMBU, GREGORY J

ART UNIT PAPER NUMBER

3634

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Drawings

655 The drawing correction⁵ filed July 5, 2005 and March 20, 2006 have been approved.₁

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because "sah member" on line 9 appears to be a typographical error. On lines 10-11, "the sash or door can be raised and/or moved the tumbler" is confusing since it is not grammatically correct. On line 16, "a extended position" is confusing since it is unclear if the applicant is referring to the extended position set forth above or is attempting to set forth another extended position in addition to the one set forth above. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

Claims 1-4, 9 and 14-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "a recess" on line 19 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the recess set forth above or is attempting to set forth another recess in addition to the one set forth above. Recitations such as "a extended position" on lines 20-21 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the extended position set forth above or is attempting to set forth another extended position in addition to the one set forth above. Recitations such as "the sash stile" on line 9 of claim 26 render the claims indefinite because they lack antecedent basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 9, 14, 20-24 and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Simpson. Brown discloses a vent stop comprising a housing 2 including a cavity 6 formed by a face plate 3, a front wall (not numbered, but shown at the right hand side of the housing as shown in figure 2), a rear wall (not

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numbered, but shown at the left hand side of the housing as shown in figure 2), a first 5 and second (not numbered, but shown in figure 2 as the wall having the hole 24) sidewall joining the front and rear wall and extending from the face plate, a tumbler 7 disposed in the cavity, the tumbler including a protruding apex (not numbered, but shown on the left in figure 2) at the top thereof, a pivot means 8 for pivotally securing the tumbler to the housing for movement between an extended position where a front face of the tumbler overlies an edge of a sliding member to prevent movement of the sliding member past the front face of the tumbler, and a retracted position within the cavity where the sliding member can be moved past the tumbler, a spring 11 for biasing the tumbler into the extended position, a release member 13 that has a first position for causing the tumbler to be in an extended position and a second position for causing the tumbler to be retained in a retracted position, and a button 17 disposed on the face plate 3 of the housing which when pressed causes the release member to move from the second position to the first position thereby causing the tumbler to be in an extended position, at least one retaining member 21. The button 17 can be pressed in a direction perpendicular to the plane of the front face 3 and slid from right to left as shown in figure 2 to cause the release member 13 to move from the second position to the first position. Since the applicant is claiming the subcombination of the vent stop limitations to the combination, i.e., the type of sliding member in which the vent stop is mounted, do not further limit the subcombination of the vent stop. Brown is silent concerning a recess that receives the biasing spring.

However, Simpson discloses a stop comprising a tumbler 38 including a recess 108 for receiving a biasing spring 44.

It would have been obvious to one of ordinary skill in the art to provide Brown with recess and spring combination, as taught by Simpson, to better hold the tumbler in the extended position.

Claims 15-19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Simpson as applied to claims 1-4, 9, 14, 20-24 and 26-28 above, and further in view of Lindstrom et al.

Lindstrom et al. discloses a pivoting tumbler 31 including a pair of retaining members 41 extending from the sides of the tumbler which dictate the maximum extended position for the tumbler, the retaining member mesh with a pair of tracks 40 in side walls of the housing 27.

It would have been obvious to one of ordinary skill in the art to provide Brown with a control mechanism, as taught by Lindstrom et al., to stabilize the pivotal movement of the tumbler. See page 2, lines 24-27.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Simpson as applied to claims 1-4, 9, 14, 20-24 and 26-28 above, and further in view of Charlton.

Charlton discloses a spring 50 comprising a ring 52 which receives a protrusion 54 in a recess (not numbered, but shown in figure 2) of a tumbler 34.

It would have been obvious to one of ordinary skill in the art to provide Brown with a spring connection, as taught by Charlton, to apply a more constant spring force to the tumbler as it moves from its retracted position to its extended position.

Response to Arguments

Applicant's arguments filed March 20, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's comments concerning claim 1, the examiner respectfully disagrees. Since the applicant has used the open ended language "comprising", the fact that Brown discloses more springs than the applicant does not prevent Brown, as modified above, from anticipating the applicant's claimed invention. Since claim 1 does not specify which direction the button is pressed, Brown, as modified above, anticipates claim 1 because the button 17 is pressed from right to left. Finally, the applicant's comments concerning the recessed portion are moot in view of the new grounds of rejection.

With respect to the applicant's comments concerning claim 9, the examiner respectfully disagrees. 1) The applicant's comments concerning the retaining members are not persuasive because they are not supported by the claim language. 2) Since the applicant has used the open ended language "comprising", the fact that Brown discloses more springs than the applicant does not prevent Brown, as modified above, from anticipating the applicant's claimed invention. 3) Finally, the applicant's comments concerning the recessed portion are moot in view of the new grounds of rejection.

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With respect to the applicant's comments concerning claim 15, the examiner respectfully disagrees. 1) In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). 2) Since the applicant has used the open ended language "comprising", the fact that Brown discloses more springs than the applicant does not prevent Brown, as modified above, from anticipating the applicant's claimed invention. 3) Since the button 17 of Brown can be both pushed in a direction perpendicular to the plane of the front face 3 and slid from right to left as shown in figure 2 to cause the release member 13 to move from the second position to the first position, Brown, as modified above, anticipates the applicant's claimed invention. 4) The applicant's comments concerning the particular use of the stop are not persuasive because the applicant is only claiming the subcombination of the stop. Since the invention of Brown can be used in a window sash, Brown, as modified above, anticipates the claims. The button 17 would not present a problem if the invention of Brown were combined with a window sash since the sashes of the window sash are commonly spaced apart to allow the sashes to move relative to one another. 5) Finally, the applicant's comments concerning the recessed portion are moot in view of the new grounds of rejection.

With respect to the applicant's comments concerning claim 24, the examiner respectfully disagrees. 1) Since the applicant has used the open ended language "comprising", the fact that Brown discloses more springs than the applicant does not

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prevent Brown, as modified above, from anticipating the applicant's claimed invention.

2) The comments concerning the movement of the button 17 are not persuasive because they are not supported by the language of claim 24.

It should be noted that the applicant's comments concerning claim 29 are assumed for the purposes of this Office action to be directed to claim 28 rather than claim 29.

With respect to the applicant's comments concerning claim 28, the examiner respectfully disagrees. 1) The applicant's comments concerning the retaining members are not persuasive because they are not supported by the claim language. 2) Since the applicant has used the open ended language "comprising", the fact that Brown discloses more springs than the applicant does not prevent Brown, as modified above, from anticipating the applicant's claimed invention. 3) Finally, the applicant's comments concerning the recessed portion are moot in view of the new grounds of rejection.

The applicant's comments concerning the combination of Brown, Simpson and Lindstrom et al., are not persuasive because the rationale to modify or combine the prior art does not have be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Since the applicant has failed to address the reasoning/rationale supplied by the examiner as

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to why the modification would have been obvious, the applicant's arguments are not persuasive.

With respect to the applicant's comments concerning claim 25, the examiner respectfully disagrees. Note that claim 25 does not require the recessed tracks be in the tumbler. Rather, claim 25 only requires the recessed tracks be on the sides of the tumbler. Additionally, the protrusions extend from the side walls of the housing since they extend from the from the slots.

With respect to the applicant's comments concerning the combination of Brown, Simpson and Charlton, the examiner respectfully disagrees. Since the spring of Charlton is a torsion spring it has a constant spring force throughout its range of motion. The spring force of the leaf spring of Brown, on the other hand, varies as the position of the tumbler 7 varies. Therefore, one of ordinary skill in the art would be motivated to replace the leaf spring of Brown with the torsion spring of Charlton to provide a more constant spring force throughout the movement range of the tumbler.

Conclusion

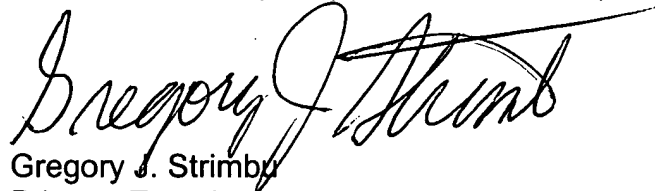
THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", is written over the printed name and title.

Gregory J. Strimbu
Primary Examiner
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April 17, 2006